

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

STATE OF OHIO, *ex rel.*
MIKE DEWINE, OHIO ATTORNEY
GENERAL

Plaintiff,

vs.

DARIEN E. SMITH
8418 Bancroft Avenue
Cleveland, Ohio 44105

TEEN USA
8418 Bancroft Avenue
Cleveland, Ohio 44105

Defendants.

CASE NO.:

JUDGE

**COMPLAINT OF OHIO ATTORNEY
GENERAL MIKE DEWINE**

Plaintiff, State of Ohio *ex rel.* Mike DeWine, Ohio Attorney General, alleges:

I. Jurisdiction and Venue

1. Plaintiff, State of Ohio, through the Attorney General of Ohio, Mike DeWine, having reasonable cause to believe that violations of Ohio law have occurred, brings this complaint under the authority vested in the Attorney General by Ohio Revised Code section 109.23 *et seq.*, Ohio Revised Code Chapter 1702, Ohio Revised Code Chapter 1716, and the Attorney General's common law authority to enforce charitable trusts.
2. Defendant Darien E. Smith's residence is 8418 Bancroft Avenue, Cleveland, Ohio 44105.
3. Defendant TEEN USA has a principal place of business believed to be at 8418 Bancroft Avenue, Cleveland, Ohio 44105.
4. Defendants' actions, as described herein, occurred in the State of Ohio, involved residents of the State of Ohio, and constitute violations of common law and contract law, or in the alternative, the Ohio R.C. Chapter 1716.

5. This is an action seeking equitable relief and damages for Defendants' violations of the common law, contract law, and in the alternative, R.C. 109 and R.C. 1716. The amount in controversy exceeds \$25,000.00.

II. Activities of Defendants Which Give Rise to this Complaint

6. Defendant Darien E. Smith is the founder of TEEN USA, a registered nonprofit organization in the State of Ohio.
7. Defendant Darien E. Smith coordinated and is solely responsible for TEEN USA's activities from inception to present.
8. Defendant Darien E. Smith regularly solicits the public claiming charitable donations given to TEEN USA would be used for "fundraising for low income individuals, sports teams and schools."
9. Defendant TEEN USA is a "charitable organization" as that term is defined in R.C. § 1716.01(A) and a "charitable trust" as that term is defined in R.C. 109.23.
10. R.C. Chapter 1716 enumerates certain registration and reporting requirements with which a charitable organization must comply if it intends to solicit contributions in Ohio and it prohibits certain acts and practices when soliciting for such contributions.
11. The Ohio Attorney General uncovered several violations of charitable law by Defendants Darien E. Smith and TEEN USA under the R.C. Chapter 109 and the R.C. Chapter 1716.
12. R.C. 1716.16(C) permits the attorney general to accept an Assurance of Discontinuance in any case in which we have authority to institute an action under Chapter 1716.
13. Defendants Darien E. Smith and TEEN USA entered into an agreement with the Ohio Attorney General known as an Assurance of Discontinuance on November 11, 2013 as a result of the uncovered violations.

14. The Assurance of Discontinuance (“Assurance”) was filed in the Franklin County Court of Common Pleas (see attached Exhibit 1) on November 18, 2013, with case number 13-MS-000935.
15. The Assurance provides in section L that Darien E. Smith must pay \$500 per month to the Charitable Law section due on the 15th of each month until July 15, 2015. See Exhibit 1, page 4.
16. Darien E. Smith has not made the payment due January 15, 2014, or any subsequently required payments.
17. The Assurance signed by Darien E. Smith provides in section K that “TEEN USA is to legally and practically cease all operations and existence, and provide documentary proof of legal dissolution to the Attorney General by November 15, 2013.” See Exhibit 1, page 4.
18. As of February 6, 2014, TEEN USA has not legally dissolved according to the records of the Ohio Secretary of State.
19. The Assurance provides in section J that Darien E. Smith “will not participate in solicitations in the State of Ohio for any charitable purpose or on behalf of any charitable organization.” See Exhibit 1, page 3.
20. The Assurance provides in section I that Darien E. Smith “will not hold any position as a volunteer, officer, trustee, employee, representative, or agent of any charitable organization in the State of Ohio.”
21. The Ohio Attorney General has received complaints from the public that TEEN USA is still actively soliciting in the Cleveland area.
22. The Assurance of Discontinuance provides in section O that “In the event Darien Smith fails to comply with any requirement contained in this Agreement, [he] is liable for and shall pay liquidated damages for each failure to comply in the amount of \$40,000.” See Exhibit 1, page 4.

COUNT 1
VIOLATION OF THE ASSURANCE OF DISCONTINUANCE

23. R.C. 1716.16(C) reads “any evidence of a violation of the assurance of discontinuance shall be prima facie evidence of a violation of this chapter...in any subsequent proceeding brought by the attorney general.”
24. Defendants violated R.C. 1716 by failing to comply with the terms of the assurance in sections I., J., K., and L.

COUNT 2 (IN THE ALTERNATIVE)
BREACH OF CONTRACT

25. The Assurance of Discontinuance signed by Darien E. Smith (in both his personal capacity and as an agent of TEEN USA) provides that if he does not comply with any requirement set forth in the Assurance he is liable for liquidated damages for each failure to comply.
26. Darien E. Smith breached the Assurance by failing to pay monthly amounts of \$500 to the Ohio Attorney General as required by the Assurance of Discontinuance section L.
27. Darien E. Smith breached the Assurance by failing to stop operations of TEEN USA as required by the Assurance of Discontinuance section K.
28. Darien E. Smith breached the Assurance by actively controlling operations as TEEN USA in violation of Assurance of Discontinuance section I.
29. Darien E. Smith breached the Assurance by soliciting on behalf of TEEN USA as required by the Assurance of Discontinuance section J.
30. Darien E. Smith breached the Assurance by failing to legally dissolve TEEN USA by November 15, 2013, as required by the Assurance of Discontinuance section K.

PRAYER FOR RELIEF

The Ohio Attorney General requests the Court grant the following relief:

- A. Impose a civil penalty of liquidated damages for an amount in excess of \$120,000 in accordance with the assurance of discontinuance signed by Darien E. Smith; or in the alternative:

- B. Impose a civil penalty against Defendants of \$10,000.00 for each violation of R.C. Chapter 1716 stated in this Complaint, pursuant to R.C. § 1716.16(D);
- C. Award joint and several liability against Defendants;
- D. Grant injunctive relief to enforce the terms of the previously agreed-upon Assurance of Discontinuance
- E. Grant Plaintiff, Ohio Attorney General, other relief as the Court deems proper and necessary.

Very respectfully submitted,

MIKE DEWINE
Ohio Attorney General

/s/ Andrew M. Howard
Andrew M. Howard (0090055)
Assistant Attorney General
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Complaint was served by regular U.S. Mail, postage prepaid, this 24th day of March, 2014 to the following:

DARIEN E. SMITH
8418 Bancroft Avenue
Cleveland, Ohio 44105

TEEN USA
8418 Bancroft Avenue
Cleveland, Ohio 44105

JOHN T. PARIS (previously retained counsel for the Defendants)
12910 Taft Road
Cleveland, OH 44108

/s/ Andrew Howard
Andrew M. Howard (0090055)
Assistant Attorney General